

Customs implications of ECJ judgement in case C-104/16P (Western Sahara)

On 21 December 2016, the European Court of Justice (ECJ) ruled that the territorial scope of the EU-Morocco Association Agreement (and the protocols hereto) does not cover Western Sahara (WS).

The Commission made Member States aware of this ECJ judgement through the Customs Expert Group (CEG – International customs matters and CEG – Origin).

Practical guidance to the customs authorities of the Member States on the implications of the ECJ ruling as regards the import of goods from WS is needed. The guidance must be based on relevant EU legislation and jurisprudence.

General principles:

- The guidance applies to goods imported into the EU as of 22 December 2016. Goods imported into the EU before 22 December 2016 are not included.
- Goods imported into the EU, whose origin is WS shall be declared so (the appropriate code to be mentioned in the customs declaration is 'EH'); tariff preferences cannot be claimed in the customs declaration and shall not be granted: the MFN duty rates apply.
- Title VI of Protocol 4 of the Association Agreement is applicable in case of reasonable doubt regarding the origin of goods covered by a preferential proof of origin.

Administrative cooperation under the Association Agreement:

Article 32(2) of Protocol 4 stipulates that in order to ensure the proper application of the protocol, the EU and Morocco assist each other, through the competent customs authorities.

In case of reasonable doubt about the authenticity of the proofs of origin and the correctness of the information given in these documents, the customs authority of the Member State of import sends a request for verification to the competent Moroccan authorities.

In the context of the ECJ ruling, the request for verification should specify that the requesting authority wants to obtain a reply on the precise place of production/manufacture of the products covered by the proof of origin. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect is forwarded in support of the request for verification.

The customs authority of the importing Member State denies preferential tariff treatment where:

- The reply confirms that the products do not fall within the territorial scope of the EU-Morocco Association Agreement;
- The reply does not contain the requested information;

- No reply is received within the established deadline (i.e. 10 months).

Preferential treatment should not be denied without invoking Title VI of Protocol 4 of the Association Agreement (i.e. without requesting verification).